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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 05-00260 JMS
	)	
Plaintiff,	)	UNITED STATES' RESPONSE AND
	)	TO DEFENDANT LOW'S MOTION
v.	)	TO DISMISS INDICTMENT FOR
	)	VINDICTIVE PROSECUTION;
JAMES LOW,	(01)	CERTIFICATE OF SERVICE
	)	
Defendant.	)	
	)	
	)	DATE: June 1, 2006
	)	TIME: 9:00 a.m.
	)	JUDGE: Hon. Alan C. Kay

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**UNITED STATES' RESPONSE TO  
DEFENDANT'S MOTION TO DISMISS THE  
INDICTMENT FOR VINDICTIVE PROSECUTION**

COMES NOW the United States of America, by and through  
Edward H. Kubo, Jr., United States Attorney, and Mark A.  
Inciong, Assistant United States Attorney, and hereby files its  
response to Defendant Low's motion to dismiss the indictment for

vindictive prosecution. Said response is based upon the files and records of this case, together with the attached memorandum of points and authorities.

I

**POINTS AND AUTHORITIES**

A. **THERE HAS BEEN NO VINDICTIVE PROSECUTION**

Defendant Low fails to make any showing of vindictive prosecution. On three separate occasions, a federal grand jury panel has returned indictments in this matter against Low for various federal criminal violations. The most recent of those, a Second Superseding Indictment returned on April 12, 2006, added one count against Low. There has been no evidence proffered by Defendant Low as to any impropriety in the grand jury proceedings in this matter. As such, the indictments returned by this independent investigative body are per se proof of probable cause that Low committed each of the crimes with which he is charged. Thus, by definition, there can be no vindictive prosecution and Defendant's motion should be denied.

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**II**

**CONCLUSION**

Because on all of the above, the United States respectfully requests that Defendant Low's motion to dismiss be denied.

DATED: May 19, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.  
United States Attorney

By /s/ Mark A. Inciong  
MARK A. INCIONG  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served by First Class Mail:

JAMES LOW  
Federal Detention Center  
P. O. Box 30080  
Honolulu, HI 96820  
Defendant PRO SE

May 22, 2006

RICHARD KAWANA, ESQ.  
810 Richards Street, Suite 851  
Honolulu, HI 96813  
Standby Counsel for Defendant  
JAMES LOW

May 22, 2006

DATED: Honolulu, Hawaii, May 22, 2006.

/s/ M. Derby-Taufa'asau